

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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**KIMBERLY PEPPER HOCTOR,**

**Plaintiff,**

**v.**

**EDUCATIONAL CREDIT MANAGEMENT  
CORPORATION, d/b/a ECMC**

**Defendant.**

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**Civil Action No.: 3:08-cv-584**

**MOTIONS OF PLAINTIFF (1) FOR RECONSIDERATION OF  
ECMC’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM  
AND (2) FOR LEAVE TO AMEND COMPLAINT**

COMES NOW Plaintiff Kimberly Pepper Hctor, by counsel, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and moves this Court for reconsideration of ECMC’s Motion to Dismiss for Failure to State a Claim, and upon reconsideration, for an order withdrawing the November 17, 2008 judgment of dismissal with prejudice and substituting in its place an order denying the motion to dismiss.

The grounds asserted for the foregoing motion is that the judgment of dismissal was clearly erroneous for the following reasons: (1) consistent with the allegations of the Complaint, Plaintiff can prove a set of facts in support of her claim entitling her to relief, (2) the Court improperly considered matters outside of the Complaint in ruling on the motion to dismiss, (3) the Court erred in finding that, in collecting Plaintiff’s defaulted student loans, ECMC was acting in its capacity as a “guaranty agency” under the FFEL program, (4) the Court erred in finding that the collection activity of ECMC is “incidental” and not “central” to any fiduciary obligation of ECMC to the United States, and (5) the Court erred in finding that, in collecting Plaintiff’s defaulted student loans, ECMC was acting as a “creditor” collecting its own debt.

Alternatively, and again pursuant to Rule 59(e), Plaintiff moves this Court to alter or amend the November 17, 2008 judgment of dismissal with prejudice by changing the dismissal to one “without prejudice” and to grant leave for Plaintiff to amend the Complaint, as is generally her right to do once prior to the filing of a responsive pleading, under Rule 15(a) of the Federal Rules of Civil Procedure.

Plaintiff’s Memorandum in Support of the foregoing motions is submitted herewith.

Respectfully submitted,

KIMBERLY PEPPER HOCTOR,

Dated: December 1, 2008

By: /s/ William L. Downing  
Of Counsel

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